

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANTHONY W. PALMER,
Plaintiff,

v.

ORDER
11-CV-702A

SAFETEC OF AMERICA, INC.,
Defendant.

The above-referenced case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1)(B). On May 31, 2012, Magistrate Judge Foschio filed a Report and Recommendation, recommending that defendant's motion to dismiss be denied as to defendant's argument that the action is time-barred, but granted on the basis that plaintiff has failed to state a claim for which relief can be granted.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, defendant's motion is denied as to defendant's argument that the action is time-barred, and granted on the basis that plaintiff has failed to state a claim for which relief can be granted. Plaintiff may file an amended complaint within 30 days of the date of this order. If it fails to do so the Clerk of Court will take all steps necessary to close the case.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: July 20, 2012